

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 685 Practice of Medicine
SPONSOR(S): Gonzalez and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2866

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Healthcare Council		Owen	Gormley
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

House Bill 685 prohibits any United States citizen or resident who travels to Cuba for medical training or a medical degree from being licensed to practice medicine in any capacity in Florida. The bill specifies that the prohibition does not apply to any native or citizen of Cuba who received his or her medical training or medical degree prior to immigrating to the United States.

The bill appears to have an insignificant fiscal impact to the Medical Quality Assurance Trust Fund (see fiscal analysis).

The bill takes effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: The bill prohibits a U.S. citizen or resident who receives his or her medical training or medical degree from practicing medicine in the state of Florida.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Profile of Cuba

The Republic of Cuba has a population of 11 million and is located 90 miles south of Key West. Fidel Castro came to power in 1959 and declared Cuba a socialist state on April 16, 1961.

The Communist Party is constitutionally recognized as Cuba's only legal political party. The party monopolizes all government positions, including judicial offices. The Communist Party or one of its front organizations approves candidates for any elected office. The People's Supreme Court is the highest judicial body. Due process is routinely denied to Cuban citizens, particularly in cases involving political offenses. The constitution states that all legally recognized civil liberties can be denied to anyone who opposes the "decision of the Cuban people to build socialism." Citizens can be and are jailed for terms of three years or more for criticizing the communist system or Fidel Castro.¹

The official language spoken in Cuba is Spanish. Of the 4.6 million people in Cuba's workforce, about 75% are employed by the state, according to Cuban Government statistics. However, according to the U.S. Department of State, the actual figure is closer to 93%. The average monthly salary in Cuba is \$16.²

In March 2003, Fidel Castro announced his intention to remain in power for life. On July 31, 2006 the Castro regime announced a "temporary" transfer of power from Fidel Castro to his brother Raul, the first time in 47 years that Fidel Castro had transferred his power. Raul Castro was elected President of the Cuban Council of State on February 24, 2008.

U.S. Embargo against Travel to Cuba

There have been numerous policy changes to restrictions on travel to Cuba since the United States imposed a comprehensive trade embargo against Cuba in the early 1960s. The embargo regulations do not ban travel itself, but place restrictions on any financial transactions related to travel to Cuba, which effectively result in a travel ban.³ On July 9, 1963, the Treasury Department's Office of Foreign Assets Control (OFAC) issued the "Cuban Assets Control Regulations (CACR)," which effectively banned travel by prohibiting any transactions with Cuba.

In March 1977, the Carter Administration announced the lifting of restrictions on U.S. travel to Cuba that had been in place since the early 1960s. The Carter Administration lifted the travel ban by issuing a general license for travel related transaction for those visiting Cuba. Direct flights were also allowed.⁴

In April 1982, the Reagan Administration reimposed restrictions on travel to Cuba, although it allowed for certain categories of travel, including travel by U.S. government officials, employees of news or film

¹ U.S. Department of State, "Background Note: Cuba", November 2007, <http://www.state.gov/r/pa/ei/bgn/2886.htm> (last visited March 27, 2008).

² *Id.*

³ Sullivan, Mark, "Cuba: U.S. Restrictions on Travel and Legislative Initiatives", Congressional Research Service, February 24, 2003, <http://fpc.state.gov/documents/organization/18220.pdf> (last visited March 27, 2008).

⁴ *Id.*

making organizations, persons engaging in professional research, or persons visiting their close relatives. It did not allow for ordinary tourist or business travel.⁵

In June 1993, the Clinton Administration allowed two additional categories of travel: travel to Cuba “for clearly defined educational or religious activities”; and travel “for activities of recognized human rights organizations.” In both categories, travelers were required to apply for a specific license from the federal government.

The regulations that remain in place today are less restrictive than those in place from 1963 to 1977, but more restrictive than those in place from 1977 to 1982 when the travel ban was essentially lifted. The CACR require that persons subject to U.S. jurisdiction be licensed to engage in any travel-related activities pursuant to travel to, from, and within Cuba. Activities related to tourist travel are not licensable. Travelers who fail to comply with Department of Treasury regulations could face civil penalties and criminal prosecution upon return to the United States.⁶ According to the OFAC, typical penalties range from \$3,000 to \$7,500 but the majority of cases are settled for less.⁷

General licenses are granted to the following categories of travelers, and they are permitted to spend money for Cuban travel and to engage in other transactions directly relating to the purpose of their travel, without the need to obtain a specific license from OFAC:

- Official business of the U.S. government, foreign governments, and certain intergovernmental organizations;⁸
- Journalistic activity;⁹ and
- Full-time professional research conducted by professionals in their professional area.¹⁰

Specific licenses are considered for the following categories of travelers on a case-by-case basis, require a written application to OFAC with supporting documentation, and are subject to limitations on per diem spending¹¹ and accompanied baggage:

- Visits to members of a person’s immediate family;¹²
- Educational activities;¹³
- Religious activities;¹⁴
- Public performances, athletic and other competitions, and exhibitions;¹⁵
- Support for the Cuban people;¹⁶
- Humanitarian projects;¹⁷
- Activities of private foundations or research or educational institutes;¹⁸ and
- Exportation, importation, or transmission of information or informational materials.¹⁹

The U.S. Department of State warns that “Cuba is a totalitarian police state, which relies on repressive methods to maintain control. These methods, including intense physical and electronic surveillance of

⁵ *Id.*

⁶ U.S. Department of State, Bureau of Consular Affairs, “Cuba: Country Specific Information”, Updated December 19, 2007, http://travel.state.gov/travel/cis_pa_tw/cis/cis_1097.html# (last visited March 28, 2008).

⁷ “Hearing of the Senate Foreign Relations Committee: Challenges for U.S. Policy Toward Cuba,” Federal News Service, October 2, 2003.

⁸ See 31 C.F.R. §515.562 (2007).

⁹ See 31 C.F.R. §515.563 (2007).

¹⁰ See 31 C.F.R. §515.564 (2007).

¹¹ The current U.S. State Department Travel Per Diem Allowance for Havana, for purchases directly related to travel in Cuba, such as hotel accommodations, meals, local transportation, and personal goods is \$177.

¹² See 31 C.F.R. §515.561 (2007).

¹³ See 31 C.F.R. §515.565 (2007).

¹⁴ See 31 C.F.R. §515.566 (2007).

¹⁵ See 31 C.F.R. §515.567 (2007).

¹⁶ See 31 C.F.R. §515.574 (2007).

¹⁷ See 31 C.F.R. §515.575 (2007).

¹⁸ See 31 C.F.R. §515.576 (2007).

¹⁹ See 31 C.F.R. §515.545 (2007).

Cubans, are also extended to foreign travelers. Americans visiting Cuba should be aware that any encounter with a Cuban could be subject to surreptitious scrutiny by the Castro regime's secret police."²⁰

Health Care in Cuba

Cuba's health system is financed and operated by the Cuban government. According to the Pan American Health Organization, the population receives free preventive, curative, and rehabilitation services, which range from primary care, routine medical attention, and dentistry to hospital care requiring the use of highly sophisticated medical technologies. In addition, all necessary diagnostic testing and drugs are provided free of charge to pregnant women and to persons receiving outpatient care in the context of certain programs.²¹ In 1996, Cuba had 60,129 physicians - that is 1 per 183 inhabitants.²² The Pan American Health Organization reports that, in Havana, a family doctor and nurse live in every neighborhood.

However, according to the National Center for Public Policy Research, private, non-governmental health facilities, where ailing citizens could buy treatment, are illegal since the state assumes complete control over the healthcare system. As a result, they report, average Cubans suffer long waits at government hospitals, while many services and technologies are available only to the Cuban party elite and foreign "health tourists" who pay with hard currency. Moreover, access to such rudimentary medicines such as antibiotics and Aspirin can be limited.²³ Since the loss of Soviet aid in the early 1990s, the healthcare system has suffered financial setbacks and many hospitals and clinics are in need of renovation and equipment, pharmaceutical costs are soaring, and many patients claim they must bring their own bedclothes, food, and fans to hospitals.²⁴

Congresswoman Ileana Ros-Lehtinen (R-FL, 18), who fled Cuba with her family to the United States when she was seven years old, is quoted as saying, "In Cuba there exists TWO health care systems- one for tourists, as well as Communist Party officials, and another for Cubans, who are forced to take with them even the most basic necessities when visiting a Cuban hospital; even aspirins are scarce."²⁵

Cuba's 12 medical schools produce thousands of new doctors each year. The country has operated what is often referred to as "medical diplomacy" for years. Rather than providing money to assist other countries, the financially strapped country sends medical personnel. Cuba's policy of medical diplomacy began in 1960 when the country sent a medical team to Chile to provide disaster relief after an earthquake. Today, Cuba provides medical assistance to many developing countries throughout the world. Since late 2000, the U.S. Central Intelligence Agency reports that Cuba has loaned Venezuela some 20,000 Cuban health workers in exchange for 100,000 barrels of petroleum products a day.²⁶ According to a Boston Globe report, Cubans have begun to object to the exodus of their health care workers, who are often paid seven times higher than their average salaries at home, because it is taking a toll on their quality of care.²⁷ Some observers call it the "oil for doctors program".

The Latin American School of Medicine

²⁰ U.S. Department of State, Bureau of Consular Affairs, "Cuba: Country Specific Information", Updated December 19, 2007, http://travel.state.gov/travel/cis_pa_tw/cis/cis_1097.html# (last visited March 28, 2008).

²¹ Pan American Health Organization, "Regional Care Health Data System- Country Profile: Cuba", 1998, <http://www.paho.org/english/sha/prflcub.htm> (last visited March 31, 2008).

²² *Id.*

²³ Balis, Ryan, "'Sicko' Presents False View of Cuba's Health System", National Policy Analysis, July 2007, http://www.nationalcenter.org/NPA557_Cuban_Health_Care.html (last visited April 3, 2008).

²⁴ Lakshamanan, Indira, "Venezuela Strains Cuban Healthcare," The Boston Globe, August 26, 2005.

²⁵ "Michael Moore's Cuba Problem", Miami Herald Blog, May 10, 2007, http://blogs.herald.com/cuban_connection/2007/05/michael_moores_.html (last visited April 3, 2008).

²⁶ U.S. Central Intelligence Agency, "The World Factbook- Cuba", Last updated March 20, 2008, <https://www.cia.gov/library/publications/the-world-factbook/print/cu.html> (last visited March 31, 2008).

²⁷ Lakshamanan, Indira, "Venezuela Strains Cuban Healthcare," The Boston Globe, August 26, 2005.

Foundation

The Latin American School of Medicine (LASM) was established in response to the hurricanes of 1998, Mitch and Georges, which devastated Nicaragua, Honduras, Haiti and the Dominican Republic. The Cuban government opened the medical school and provided scholarships to students from the affected countries. The idea was for the graduates of the medical school to replace the Cuban doctors who were serving in the underserved areas of their home countries, mainly in Latin America and Africa. After meeting with members of the United States Congressional Black Caucus in June 2000, when Congressman Bennie Thompson from Mississippi remarked that there are large areas in his district which do not have a single physician, Fidel Castro announced a plan for medical diplomacy within the United States. He offered 500 full scholarships to Cuba's LASM for U.S. low-income minority students.

In his September 2000 speech at Riverside Church in New York, President Castro said, "We are prepared to grant a number of scholarships to poor youth who cannot afford to pay the \$200,000 it costs to get a medical degree in the United States."²⁸

Although there are no credible sources of enrollment numbers, most published figures state that in 2005 LASM enrolled approximately 10,000 low-income students from 29 countries, including the United States.²⁹

Applicant Criteria and Scholarship Information

Applications from U.S. citizens are administered through the New York City-based Interreligious Foundation for Community Organization (IFCO). The IFCO Medical School Scholarship Committee reviews applications, but all final decisions regarding admission are made in Cuba by a committee representing the Cuban Ministry of Public Health and the faculty of the LASM.³⁰

To be considered for the U.S. scholarship program, an applicant must be:

- A United States citizen with a current passport;
- Proficient in college-level sciences, which include a minimum of:
 - One year of biology
 - One year of inorganic chemistry with lab
 - One year of organic chemistry with lab
 - One year of physics;
- Committed to practice medicine in poor and medically underserved communities in the United States after graduation; and
- Under 30 years of age.

The IFCO states that "persons of color and/or low income are especially encouraged to apply."³¹ The scholarship covers tuition, dormitory room and board, and textbooks. Travel to and from the school is not a covered expense.

At the school's first graduation in August 2005, President Castro announced the country would join with Venezuela to train 100,000 physicians for developing countries over the next decade - including 60,000 new scholarships for Venezuela and 30,000 for the rest of Latin American and the Caribbean.³²

LASM Facility and Program Overview

The LASM is located on the site of a formal naval academy. The campus has 28 buildings, which house 80 classrooms, 37 laboratories, five amphitheatres, dormitories, an infirmary, and other

²⁸ IFCO, "The Latin American School of Medicine, Medical School Scholarship Program", <http://www.ifconews.org/MedicalSchool/documents/LASMBrochure.pdf> (last visited March 31, 2008).

²⁹ Medical Education Cooperation with Cuba, "Latin American Medical School, Cuba & the Global Health Workforce: Training Human Resources", 2005, <http://www.saludthefilm.net/ns/Elam%20Intro.pdf> (last visited March 31, 2008).

³⁰ IFCO, "The Latin American School of Medicine, Medical School Scholarship Program", <http://www.ifconews.org/MedicalSchool/documents/LASMBrochure.pdf> (last visited March 31, 2008).

³¹ *Id.*

³² Medical Education Cooperation with Cuba, "Latin American Medical School, Cuba & the Global Health Workforce: Training Human Resources", 2005, <http://www.saludthefilm.net/ns/Elam%20Intro.pdf> (last visited March 31, 2008).

facilities.³³ Extracurricular activities located on or near campus include music, dance, film, volley ball, basketball and soccer.

All courses at the LASM are taught in Spanish, so students participate in a 12-week intensive Spanish language program. The pre-med curriculum includes an introductory course in health sciences as well as courses in chemistry, biology, math, and physics. The six-year medical school program, which follows the pre-med program, begins every September and is divided into 12 semesters. Students study at the LASM campus for the first two years and then go to another of Cuba's 21 medical schools to complete their studies. The study plan embodies the Cuban philosophy of combining population-based public health principles and prevention with clinical medicine.

Fidel Castro is quoted as saying, "What we want from the Latin American School of Medicine is for students from our sister nations to become imbued with the same doctrine in which our own doctors are educated, with that total devotion to their noble future profession- for the doctor is like a shepherd, a priest, a missionary, a crusader for the people's health and physical and mental well-being."³⁴

Students are exposed to working with Cuban communities even in their basic science years and taught that public health is an important subject in their clinical training. The program also includes two elements that tailor studies to the students' home situation: an enhanced emphasis on tropical and infectious diseases and an opportunity to return to their home countries for the last six months of their internship, mentored by Cuban professionals serving there.

Graduates

Graduates from LASM take the National Final Cuban Examinations at the end of their program and then do an internship in their home countries. Then, they must take their home country's qualifying exam, just as other medical students must do to be licensed to practice medicine in their country.³⁵

The school is accredited by the World Health Organization and recognized by the United States Educational Commission for Foreign Medical Graduates (ECFMG). The purpose of ECFMG certification is to assess the readiness of graduates of schools recognized by the ECFMG to enter residency and fellowship programs accredited by the Accreditation Council for Graduate Medical Education (ACGME). An international medical graduate who wishes to enter an ACGME-accredited residency or fellowship program in the United States must be certified by ECFMG before he or she enters the program. An international medical graduate must also be certified by ECFMG to take Step 3 of the three-step United States Medical Licensing Examination. ECFMG certification is also one of the requirements to obtain an unrestricted license to practice medicine in the United States.³⁶

Eight Americans graduated from LASM in 2007. Four New Yorkers, three Californians, and a Minnesotan, all from minority backgrounds, studied in Havana from April 2001- July 2007, forming the first class of American graduates from the LASM.³⁷ Although exact enrollment numbers are unconfirmed by a reliable source, the IFCO said in 2007 that there were about 100 Americans currently enrolled at the LASM.³⁸

Medical Education in Florida

Florida ranks 37th nationally in the number of medical school students (both allopathic and osteopathic) per 100,000 state population.³⁹ Florida has a low number of medical residency positions per 100,000

³³ IFCO, "The Latin American School of Medicine, Medical School Scholarship Program", <http://www.ifconews.org/MedicalSchool/documents/LASMBrochure.pdf> (last visited March 31, 2008).

³⁴ *Id.*

³⁵ Council on Hemispheric Affairs, "Cuban Medical Diplomacy", October 30, 2006, <http://www.coha.org/2006/10/30/cuban-medical-diplomacy-when-the-left-has-got-it-right/> (last visited March 31, 2008).

³⁶ ECFMG, "2008 Informational Booklet", <http://www.ecfmg.org/2008ib/ibfaq.html> (last visited April 3, 2008).

³⁷ USA Today, "Eight Americans Graduate from Free Cuban Medical School", July 25, 2007, http://www.usatoday.com/news.health/2007-07-25-cuba_N.htm (last visited March 31, 2008).

³⁸ *Id.*

³⁹ Council for Education Policy, Research and Improvement (CEPRI). Medical Education Needs Analysis. November 2004.

state population and ranks 41st in the nation.⁴⁰ Twenty-six percent of Florida's doctors are over the age of 65.⁴¹

In 2006, the Florida Board of Governor's approved the establishment of two new medical schools.⁴²

According to the department, there was a 51% overall increase in the number of new healthcare licenses issued in Fiscal Year 2006-2007, compared with FY 2004-2005, for a total of 71,655 licensees.⁴³ In FY 2006-2007, 40,065 medical doctors were operating under an active in-state license. The estimated state population in 2006 was 18,089,888.⁴⁴

Effect of Proposed Changes

The bill prohibits any U.S. citizen or U.S. resident who travels to Cuba to receive medical training or a medical degree from:

- Completing his or her residency in the state;
- Being licensed to practice medicine in the state; and
- Practicing medicine in any capacity in the state.

The bill specifies that the prohibition does not apply to any native or citizen of Cuba who received his or her medical training or degree in Cuba prior to immigrating to the United States.

C. SECTION DIRECTORY:

Section 1: Creates s. 458.3096, relating to the prohibition of medical residency, licensure, or practice in the state; grounds for prohibition; exception.

Section 2: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

⁴⁰ Florida Department of Health. Annual Report on Graduate Medical Education in Florida. January 2007

⁴¹ *Id.*

⁴² The new medical schools are located at the University of Central Florida in Orlando and Florida International University in Miami.

⁴³ Department of Health, Medical Quality Assurance Annual Report 2007, <http://www.doh.state.fl.us/mqa/Publications/06-07mqa-ar.pdf> (last visited April 1, 2008).

⁴⁴ United States Census Bureau, "State and County Quick Facts", <http://quickfacts.census.gov/qfd/states/12000.html> (last visited April 1, 2008).

U.S. citizens or residents who travel to Cuba to receive medical training or medical degree from the LASM will not be able to receive a license to practice medicine in the state.

D. FISCAL COMMENTS:

There will be a minimal increase in workload associated with the investigation of the citizenship status of licensure applicants by the Board of Medicine. The increase can be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

The Due Process Clause of the Florida⁴⁵ and United States Constitutions generally requires (1) advance notice and (2) an opportunity to be heard prior to deprivation of life, liberty, or property.⁴⁶ Here, the bill prohibits, among other activities, the practice of medicine in Florida for a U.S. citizen or resident who travels to Cuba to receive medical training or a medical degree. To the extent that such a person is licensed in Florida to “practice medicine”, the bill may nullify his or her professional license without advance notice or an opportunity to be heard. Consequently, this nullification would appear to implicate the Due Process Clause of the Florida and United States Constitutions.

B. RULE-MAKING AUTHORITY:

The department appears to have sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 17-18, the bill does not define the “practice of medicine” and thus it is not clear whether the intent is to refer solely to allopathic and osteopathic physicians, or additional licensees such as chiropractors and podiatrists.

D. STATEMENT OF THE SPONSOR

As a duly elected member of the Florida House of Representatives, I have the constitutional authority to file legislation to regulate the issuance of licenses, medical or otherwise, in our state. This bill does not affect our relations with any nation and is therefore not a foreign policy initiative. Rather, it sends a clear message that Florida will not recognize medical degrees from a regime that so unashamedly rejects the basic tenets of humanity in its own apartheid medical system. This bill has wide support, including many of my colleagues, constituents, and organizations such as the Florida Medical Association.

Contrary to myths promulgated by duplicitous American film directors who attack the very system that grants them their lives of privilege and luxury, ordinary Cuban citizens do not have access to their own beaches, their own hotels (which are all government owned), or uncensored information, among other things. Specifically on the issue of healthcare, ordinary citizens are relegated to subpar, archaic, and quite frankly, abusive conditions in absolute squalor, while high-level government officials, communist party elites, and hard currency-paying foreigners are treated to proper care in state-of-the-

⁴⁵ Art. I, s. 9 of the Florida Constitution states in part “No person shall be deprived of life, liberty or property without due process of law.”

⁴⁶ *State v. Smith*, 547 So.2d 131 (Fla. 1989).

art facilities. This Cuban version of "free" healthcare is nothing more than healthcare apartheid, and I believe that those who selfishly turn a blind eye to such human and civil rights abuses do not possess the basic judgment and character required for the ethical practice of medicine in Florida.

To his credit, Rep. Charles Rangel rightfully championed U.S. sanctions and divestment against the repressive apartheid regime of South Africa in the 1980's, and I salute him for it. However, I do not recall him being accused of pandering to an "extremist" base.

In 2000 the very same Rep. Rangel led a congressional delegation to Cuba to meet with the architect of Latin-American apartheid himself, Fidel Castro. Upon their arrival, the Cuban tyrant unveiled a program offering 500 medical scholarships to U.S. nationals, which was classified as a "cultural exchange" program by the State Department to avoid the restrictions of the embargo against Cuba.

Our students should not be contributing to, nor legitimizing such a blatant system of apartheid, nor should they be used in what is merely a propaganda and public relations ploy by a sworn enemy of America, which shares the unsavory distinction of other rogue states such as Iran and North Korea of being included on the State Department's list of terrorist nations. I am certain that most Americans would cringe at the thought of their children participating in a Mahmoud Ahmadinejad or Kim Jong-il Scholarship Program.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES